IN THE

Supreme Court of the United States

October Term, 1969

No. 540

JULIA ROSADO, LYDIA HERNANDEZ, MAJORIE MILEY, SOPHIA ABROM, RUBY GATHERS, LOUISE LOWMAN, EULA MAE KING, CATHRYN FOLK, ANNIE LOU PHILLIPS, and MAJORIE DUFFY, individually, on behalf of their minor children, and on behalf of all other persons similarly situated,

Petitioners,

against

GEORGE K. WYMAN, individually and in his capacity as Commissioner of Social Services for the State of New York, and the DEPARTMENT OF SOCIAL SERVICES FOR THE STATE OF NEW YORK,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE ANNEXED BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF PEOPLE FOR ADEQUATE WELFARE

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MOTION FOR LEAVE TO FILE ANNEXED BRIEF *AMICUS CURIAE* AND STATEMENT OF INTEREST OF *AMICUS*

PEOPLE FOR ADEQUATE WELFARE respectfully moves the Court for permission to file the attached brief *amicus*

curiae, for the following reasons. The reasons assigned also disclose the interest of the *amicus.*

The Suffolk County, New York organization known as People for Adequate Welfare (hereinafter P.A.W.) is a voluntary membership organization, serving some 46,000 welfare recipients in a suburban county comprising the Eastern half of Long Island. The organization, an affiliate of the National Welfare Rights Organization, now in its second year of operation, is currently seeking status as a Membership Corporation of the State of New York. It has as its primary purpose the promotion of welfare rights in Suffolk County.

As such, P.A.W. has by painful experience become thoroughly familiar with the impact and the ramifications of the cutbacks in public assistance grants promulgated by the New York Legislature in March, 1969, which is the subject matter of this suit. P.A.W. has been in constant contact with the Suffolk County Commissioner of Social Services, the Chairman of the Suffolk County Board of Supervisors, and the Speaker of the New York State Assembly, with regard to the effects of the cutbacks and the response of the people in Suffolk County thereto.

Since P.A.W. has for a membership only persons who receive public welfare assistance, the magnitude and significance of the issues under consideration in this action which affects "all other persons similarly situated," is of direct and vital importance to this organization. Prior to this application no party to this action resided in Suffolk County nor was any P.A.W. member a party. Therefore,

the brief submitted by Petitioners in this action will not necessarily reflect the position nor express the arguments of this organization or the welfare recipients it represents. P.A.W. believes, therefore, that this organization's position merits the attention of this Court and should appropriately be presented in the form of a brief *amicus curiae*.

Counsel for the Petitioners-Appellants have consented to the filing of a brief *amicus curiae* by the movants (see Exhibit A). The present motion is necessitated since the counsel for the Respondents-Appellees have stated that they shall neither consent nor oppose the submission of a brief *amicus curiae* by the movants (see Exhibit B).

WHEREFORE, movants pray that the attached brief *amicus curiae* be permitted to be filed with the Court.

Respectfully submitted,

FLOYD SABISOHN
Counsel, People for Adequate Welfare
67 Harned Road
Commack, New York 11725
(516) 543-7667

Exhibit A

[LETTERHEAD OF]

CENTER ON SOCIAL WELFARE POLICY & LAW
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK
401 West 117th Street
New York, N. Y. 10027
(212) 280-4112

October 14, 1969

Floyd Sarisohn, Esq.
67 Harned Road
Commack, Long Island 11725

Dear Mr. Sarisohn:

Pursuant to Rule 42(2) of the Rules of the Supreme Court, Petitioners in *Rosado, et al.* v. *Wyman,* no. 540, O.T. 1969, hereby consent to the filing of a brief *amicus curiae* by People for Adequate Welfare, P.O. Box 388, Patchogue, Long Island 11772.

Very truly yours,

LEE A. ALBERT
Lee A. Albert
Attorney for Petitioners

LAA:js

Exhibit B

[LETTERHEAD OF]

STATE OF NEW YORK
DEPARTMENT OF LAW
State Office Building
80 Centre Street
New York, N. Y. 10013
Telephone: 488-3442

October 20, 1969

Re: *Rosado* v. *Wyman*

Floyd Sarisohn, Esq.
Sarisohn, Thierman & Sarisohn, Esqs.
67 Harned Road
Commack, Long Island

Dear Sir:

This office can take no position with regard to your application to file a brief *amicus curiae* in the United States Supreme Court in the above case.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By PHILIP WEINBERG

PHILIP WEINBERG
Principal Attorney

PW:lac

IN THE

Supreme Court of the United States

October Term, 1969

No. 540

JULIA ROSADO, LYDIA HERNANDEZ, MAJORIE MILEY, SOPHIA ABROM, RUBY GATHERS, LOUISE LOWMAN, EULA MAE KING, CATHRYN FOLK, ANNIE LOU PHILLIPS, and MAJORIE DUFFY, individually, on behalf of their minor children, and on behalf of all other persons similarly situated,

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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICUS CURIAE* OF PEOPLE FOR ADEQUATE WELFARE

Preliminary Statement

This case presents a fundamental challenge to the right of a state to legislate in disregard of federal law. Specifi-

cally, New York State, through the State Commisisoner of Social Services, is charged with participating in the benefits of the Social Security Act of 1935, as amended, 42 U.S.C. §601 *et. seq.*, without adhering to the requirements for participation in that Act and further, with legislating in direct contravention of that Act's mandates.

New York State's act of non-compliance with the federal law, an act motivated by the State Legislature's desire to save some 75 to 100 million dollars in fiscal 1969-70, works a devastating hardship upon the 850,000 mothers and needy children in New York dependent on Aid to Families with Dependent Children (AFDC). The effect of New York State's effort to save money at the expense of its poorest citizens, amply documented in the record of this case, is to promote nutritional, mental, physical and emotional deterioration and a consequent increase in the rate of mortality of those affected. The secondary effects upon the children, such as educational retardation, is incalculable.

ARGUMENT

I

New York State has expressly disregarded the Federal Social Security Act of 1935, as amended by Congress in 1967, since the amounts used by the state to determine the needs of individuals have not been adjusted to reflect fully changes in the cost of living.

The Federal Mandate, 42 U.S.C. §602 (a)(23)

Recognizing that the federal purposes underlying the Aid to Families with Dependent Children (hereinafter AFDC) program were being undermined by inadequate grants and that rising welfare rolls threatened even further reductions in grants, Congress in 1967 imposed a significant requirement on the states toward the end of "increasing income of recipients of public assistance." S. Rep. No. 844, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Admin. News, 2834, 3132 (1967).

Section 213(b) of Public Law 90-248, Social Security Amendments of 1967, added a new state plan requirement as a condition for participation in the AFDC program—Section 402(a)(23) of the Social Security Act of 1935, as amended, 42 U.S.C. §602(a)(23) (hereinafter §602(a)(23)). This section requires each state to:

> "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

The implementing regulation and interpretations of the Department of Health, Education and Welfare (H.E.W.) confirm that the clear requirement of this provision is that all states increase "the amounts used to determine needs of individuals" by July 1, 1969, to reflect fully increases in the cost of living since such amounts were last established prior to January 2, 1968, the date Section 602(a)(23) became law, up to July 1969. 45 C.F.R. 233.20(a)(ii), 34 Fed. Reg. 1392. The brief *amicus curiae* submitted by H.E.W. in *Lampton* v. *Bonin*, —— F. Supp. —— (E.D. La., 1969) (App. p. 189a), indicates that Section 602(a)(23) operates as a freeze against cutbacks, when the cost of living rises. The section, hence, requires the states to readjust their standards of assistance or "the amounts used by the state to determine the needs of individuals" to reflect fully changes in the cost of living by July 1, 1969.

"Standards of Need"

Under the old as well as the new law, each state is federally required to establish a state-wide need standard "to identify needy individuals and to establish the amount of assistance to which an individual is entitled." 42 U.S.C. §602(a)(1), H.E.W. Handbook of Public Assistance Administration, Pt. IV, §4120. This standard must be expressed in monetary amounts for each consumption item or group of items included in the standard. 45 C.F.R. 233.20(a)(ii), 34 F.R. 1392 (1969). Thus, each state defines its standard of need in terms of the amounts of money which it considers to be the cost of food, shelter, clothing, household supplies, utilities and other items which it deems necessary for subsistence. That standard, whatever it was at the date of this amendment, is controlling in measuring

the necessary adjustment for cost of living in arriving at an updated standard of need.

The burden of Section 602(a)(23) is, therefore, that states must, using their own standards of need in effect at the time of this amendment, re-express, in monetary terms, those standards so as to reflect changes in the cost of living. The states may not suddenly redefine their standards of need to a lower level or subtract from the items deemed necessary for subsistence and hence claim a technical compliance with the amendment by pointing to their level of payment in relation to their reduced standard of need. 45 C.F.R. 233.20(a)(ii), 34 Fed. Reg. 1392. Since, estimated conservatively, the cost of living in New York increased 10.1% from May, 1967 through July 1, 1969, the amendment contemplates an upward adjustment in New York's standard of need. (See, Affidavit of Dr. Abraham Burstein, App. 23aa).

This amended section of the Social Security Act is a departure from previous Congressional policy which allowed the states wide latitude in determining standards of need. Congress now requires states, without subtracting from the composition of their standard as defined by them at the time this amendment became effective, to adjust the standard to accord with the cost of living as of July 1, 1969. While a departure, the amended section's import is clear, nonetheless, and "a restrictive interpretation should not be given a statute merely because Congress has chosen to depart from custom." *United States* v. *Sullivan*, 332 U.S. 689, 693, 68 S. Ct. 331, 334 (1948).

The majority opinion by Circuit Judge Hays, in the ruling below, is that since the schedules of payment in

Section 131-a are based on prices as of May, 1968, New York has complied with Section 602 (a)(23) (App. H, p. 61). Such an interpretation is logically impossible, given a constant standard of need which is adjusted in the context of a rising cost of living. Attention, therefore, should be directed at the actions taken by New York with particular emphasis on Section 131-a of the New York Social Services Law.

New York's Non-Compliance with Federal Law

New York, as of January 1, 1968, prior to the effective date of Section 602 (a) (23), had a fixed standard of need. That is, New York had determined in monetary amounts the sums required by individuals to live at a subsistance level. Included in New York's standard of need were universally recurring items administered under a regular "flat grant." These included: food, personal incidentals, utilities and other necessities. 18 NYCRR §352.4. Recognizing that the amounts deemed necessary for regular recurring needs are not sufficient to cover special needs of recipients, New York, in addition, set forth the money amounts to cover expenses such as initial or replacement expenditures for clothing and home furnishings, expenses incident to maternity and childbirth, medically required special diets, travel expenses for employment or medical reasons, school lunch allowances and so on. The combination of these "special grants" and the universal "flat grant" comprises New York's standard of assistance or need standard. 18 NYCRR 353.1 (c).

Pursuant to its authority prior to the enactment of New York Social Service Law, §131-c, the State Department of Social Services determined the monetary amounts for the

above components of need on the basis of pricing done in May, 1967. (N.Y. Soc. Serv. Law §131-c.) The projected cost of living increase in New York from May, 1967, to July, 1969, is 10.1%. (*Supra*, p. 11.) The standards of need in effect as of January 2, 1968, the enactment date of Section 602(a) (23), must therefore be increased by 10.1% to comply with the federal mandate.

In May, 1968, New York repriced the monetary amounts reflecting the state's standard of need so as to slightly increase those amounts. This repricing cannot, as held in the court below, be construed as compliance with Section 602 (a) (23) for several reasons: (1) The overall sense of Section 602 (a) (23) requires an updating in the standards of assistance so that the standard *in effect* on July 1, 1969 will reflect fully current living costs. New York's repricing in May, 1968 makes no provision for cost of living increases from May, 1968 through July, 1969. Given the relatively steady upward cost of living curve, a projection to reflect cost in July of 1969 should have been made by New York at the time of repricing. (2) Even if the New York adjustments of May, 1968 were deemed sufficient to comply with Section 602 (a) (23), New York through Section 131-a has nullified that May adjustment and abolished the increase it previously made in plain violation of Section 602 (a) (23). The states are required to continue to utilize the standard of need once it has been adjusted upward to reflect rising living costs until such time as the cost of living decreases so as to justify a concomitant downward adjustment of standards. (HEW, *Amicus Brief*, App. A. at 21-22.) (3) New York, through Section 131-a, not only rescinded the May 1968 cost of living adjustment, but acted in patent

disregard of the federal cost of living adjustment mandate by approving drastic reductions in public assistance expenditures. These circumstances necessitate a closer examination of New York Social Services Law, Section 131-a.

New York Social Services Law, Section 131-a

New York Social Services Law §131-a, L. Ch. 184, March 31, 1969, was enacted as part of the budget of the State of New York for the fiscal year 1969-70. The New York Legislature in Section 131-a abolished the prior administrative practice of making annual adjustments for specific cost of living changes including, most critically, the adjustment for this year reflecting an additional 7% increase since May, 1968. Instead, the Legislature redetermined the content of the standard of needs and the amounts of aid to be paid. This redetermination resulted in an overall reduction in total AFDC expenditures (federal, state and local) of some 21 percent from the projected expenditures at current levels.

First, the amounts of the regular, recurring payments to families of specific sizes for their fundamental needs are no longer related to the actual age of the oldest child in each family but are standardized sums based on a mean age of the oldest child in all recipient families of that size, an adjustment which results in sharp reductions in regular grants to many families with older children. The effect of a standardized schedule ignoring age derived from a differentiated schedule of grants based on age is a failure to pass on to recipients the full increase of the appropriate cost of living factor applied to the amounts used on January 2, 1968 to determine the needs of recipients.

Second, grants to cover expenditures for clothing and home furnishings are abolished and almost all previously existing "special grants" to cover extraordinary needs such as medically required diets, maternity expenses, homemaker services, school lunch money and the like are eliminated.

The violative aspects of New York Social Services Law §131-a are punctuated by the fact that, in addition to providing schedules of payment which hardly reflect compliance with an upward adjusted standard of need, the new law in fact consolidates and deminishes the previously state-defined standard of need—in direct disregard of federal law and regulations.

II

New York Social Services Law, §131-a, violates the 1967 amendment to the Federal Social Security Act since the New York law effects a consolidation and reduction in the standard of need for welfare assistance contrary to the prohibition of the federal law and regulations.

The Federal Prohibition

The Department of Health, Education and Welfare regulations issued pursuant to Section 602 (a)(23) expressly provide with respect to the federally mandated state adjustment to standards of need that:

> "In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction of the content of the standard." 45 C.F.R. 233.20 (a)(2)(ii), 34 F.R. 1394 (1969).

New York's Actions

As under prior practice, New York, in the new provisions of Section 131-a, purports to pay its full standard of need, i.e., whatever amount is determined necessary for subsistence living, New York pays 100% of that standard, unlike some states which profess to pay only a percentage of their standard of need. Hence, the New York Social Services Law provides that the "schedules shall be deemed to make adequate provision for all items of need * * * exclusive of shelter and fuel for heating * * *" (Section 131-a).

Since the schedules of payment in Section 131-a amount to a reduction in aid for a majority of the welfare recipients, and since New York does not claim to be simply paying a lesser percentage of her standard of need, the reduction in aid can only be translated as a consolidation and reduction in the standard of need itself, accompanied by a prohibition on the local welfare agencies from paying more than is now, under the new lowered standard, deemed necessary. Further, the total exclusion of special grants to meet particular family needs under Section 131-a, flatly violates the requirement of the federal regulation that "a consolidation of the standard (i.e. combining of items) may not result in a reduction of the content of the standard." 45 C.F.R. 233.20(a)(2)(ii), 34 F.R. 1394 (1969). That there has been a reduction in content is most obvious with respect to items which were previously provided for in expressed terms and are now expressly eliminated. Such items include: additional regular allowances for the aged, disabled, pregnant women, expenses incident to employment or training, special diets, allowances for oversized

clothing, allowances for telephones and extra grants for diaper washings. Also, prior to the 1969-70 budget, the special irregular grants were issued on the basis of individually verified need for such expenses as: major items of clothing, furniture, fumigation, door locks, replacement of lost or stolen checks, layettes, establishment of a home and so on. Under the new legislation, allowance for all of these items is abolished and social services officials are prohibited from making grants in excess of the schedules of maximum monthly grants and allowances set forth in the statute.

New York has, in short, devised a new standard of need in violation of Section 602(a)(23). Indeed, the manner in which this new standard was determined violates a long-standing federal requirement, confirmed in 602(a)(23), that need standards be determined in relation to "facts • • • established as to the money amounts necessary to secure • • • economic security for people in need • • •" (H.E.W. Handbook of Public Assistance Administration, Part IV, Section 4120).

III

New York Social Services Law, §131-a, even if deemed a "ratable reduction" pursuant to the interpretation of the Department of H.E.W., violates the Federal Social Security Act of 1935, as amended, since such reductions contravene the clear meaning of the federal law and the intendment of Congress.

The Department of Health, Education and Welfare propounds an interpretation of Section 602 (a)(23) which would permit states technically to comply with the Social Security Act amendment while at the same time reducing the actual amounts paid to individuals. Thus, H.E.W. has said:

> "* * * In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section * * *" 45 C.F.R. 233.20 (a)(ii), 34 Fed. Reg. 1392.

This interpretation permits states to make "ratable reductions" which simply means that they pay a smaller percentage of their standard of need.

Assuming, *arguendo,* that New York attempted to justify its reduced welfare payments on this basis—even though such a position would squarely conflict with the statement in Section 131-a that the "schedules shall be deemed to make adequate provision for all items of need * * *"—Section 131-a would still violate federal law since Section 602 (a)(23) contemplates no percentage reductions on the amount of need paid by the states.

The Congressional Intent

Though this prohibition on reductions is not expressly stated in the statute, it is necessarily implied, otherwise, a state could reduce the mandated adjustment in standards of need to a mere formality and completely obliterate the inexorable effect of Section 602 (a)(23) to raise the level of recipient grants. Any other conclusion is "plainly at variance with the policy of the legislation as a whole." *United States* v. *American Trucking Ass'ns., Inc.*, 310 U.S. 534, 543, 60 S.Ct. 1059 (1940), and "that which is implied in a statute is as much a part of it as that which is expressed." *United States* v. *Jones*, 204 F. 2d 745, 754 (7th Cir. 1953).

H.E.W. seeks to infer a Congressional sanction of percentage reductions from the failure to mention them in Section 602 (a)(23). However, because a percentage payment kept constant automatically transfer the increase in the standard of need into an increased payment, it is not at all surprising that Congress did not refer to percentage reductions in Section 602 (a)(23)—there simply was no need to in order to achieve the desired increases.

"In the interpretation of statutes, the function of the courts * * * is to construe the language so as to give effect to the intent of Congress." *United States* v. *American Trucking Ass'ns., Inc., Supra,* and a court will "not suppose that Congress intended to enact unnecessary statutory amendments," *Uptagrafft* v. *United States,* 315 F. 2d 200, 204 (4th Cir., 1963) or presume "that the legislature intended any part of a statute to be without meaning." *General Motors Acceptance Corporation* v. *Whisnant,* 387

F. 2d 774, 778 (5th Cir. 1968). To accept the H.E.W. interpretation of Section 602(a)(23), permitting ratable reductions, would render the section a vestigial remnant of surplusage.

It is well to recall that the Social Security Act Amendments of 1967 were introduced toward the end of "increasing income of recipients of public assistance." S.Rep. No. 744, 90th Cong., 1st Sess. (1967), *U.S. Code Cong. & Admin. News*, 2834, 3132 (1967). As the opinion of District Court in this action indicated:

> "The language of the basic requirements of 402 (a)(23) remained virtually unchanged throughout its legislative evolution. There is no hint from either committee that it intended to change the purpose of the section as expressed by Administration spokesmen. Hence, there is no reason to believe that Congress failed to appreciate the import and plain meaning of the language in 402(a)(23)." (Opinion in Support of the Issuance of a Preliminary Injunction of Hon. Jack B. Weinstein, District Judge, dated May 16, 1969—App. 50a).

CONCLUSION

For all of the foregoing reasons, the judgment of the Circuit Court should be reversed and the order of the District Court affirmed and reinstated.

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